



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Application of:

Andrew LAITT

Serial No.: 09/980,084

Filed: May 2, 2002

For: **A METHOD OF PACKAGING GOODS**

) Confirmation No. 8099
)
) Art Unit: 3721
)
) Examiner: Hemant Desai
)
)
)
) Date: September 14, 2006
)

SUBMITTAL OF SECOND CORRECTED APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to a telephone call from Ms. Tracy Young (571-272-1644) of the U.S. Patent and Trademark Office on September 13, 2006, and further to the Submittal of Corrected Appeal Brief on August 29, 2006, Appellant submits the attached Appeal Brief (Second Corrected). The Appeal Brief was corrected on August 29, 2006 to contain a concise separate explanation of the subject matter of independent claim 1 on pages 2-3 and a concise explanation of the subject matter of independent claim 33 on pages 3-4. In addition, the patentably distinct features of independent claims 1 and 33 were also presented in arguments on pages 6-7.

Ms. Young requested that independent claim 1 be identified specifically in the concise explanation on pages 2-3 and independent claim 33 be identified specifically in the concise explanation on pages 3-4. The attached Appeal Brief (Second Corrected) includes these further corrections.

Entry of the Second Corrected Appeal Brief and consideration of the appeal are respectfully requested.

If additional minor corrections should still be required, the Examiner is authorized to make them by Examiner's Amendment.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (000026.00032). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this Corrected Appeal Brief, Appellant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely.

Any fees due are authorized above.

Respectfully submitted,

Andrew LAITT

By: Michael D. White
Michael D. White
Reg. No. 32,795
Attorney for Appellants

BLANK ROME LLP
Watergate
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
Telephone: (202) 772-5800
Facsimile: (202) 572-8398
Customer No.: 27557

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APPEAL BRIEF (SECOND CORRECTED)

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Appellant, through undersigned counsel, respectfully submits the present Appeal Brief in support of the Notice of Appeal filed April 14, 2006.

I. Real party in interest

The real party in interest is the inventor Mr. Andrew Laitt of London, United Kingdom.

II. Related appeals and interferences

There are no related appeals or interferences.

III. Status of claims

Claims 1-33 have been presented for examination. Claims 7, 21, 23 – 26, 28 – 29 have been cancelled. Claims 1 – 6, 8 – 20, 22, 27, and 30 – 33 are pending and have been rejected more than twice, and form the subject matter of this appeal.

IV. Status of amendments

No amendments after the Board's final Office Action dated December 14, 2005 have been presented. The Pre-Appeal Brief Request for Review filed April 14, 2006, did not include any amendments.

V. Summary of claimed subject matter

Independent claim 1 of the present claimed invention is directed to a method of packaging a brittle food-stuff in a strip of pouches with at least one pleat formed on each side of each pouch that causes the pouches to adopt a substantially brick shaped configuration when sealed with a pre-determined amount of air and a pre-determined amount of foodstuff inside (page 4, lines 10 -123; Figure 2, pleats 4). The pre-determined amount of air forms a layer in each pouch and between each pouch that has a cushioning effect reducing the likelihood of breakage of the food-stuff (page 2, lines 28 -29). The strip of standard serving portion pouches also allows for a new fresh portion of the food-stuff to be enjoyed every time the food-stuff is consumed (page 2, lines 12 – 21). The method of independent claim 1 comprising the steps of:

- a. forming a tube having a predetermined cross sectional shape and area (page 4, lines 1 - 6; Figure 1)
- b. forming a first seal at a lower end of the tube (page 4, lines 6 – 10; Figure 2, seal 3)
- c. feeding a pre-determined amount of the food-stuff to be packaged into the tube (page 4, lines 14 – 16; Figure 2, food-stuff 204),
- d. forming a second seal in the tube at a pre-determined distance above the first seal (page 4, lines 17 – 20; Figure 2, seal 3)
- e. repeating the steps of feeding the foodstuff and sealing along the tube to form a strip of sealed pouches of pre-determined dimensions and predetermined volume containing the

foodstuff each pouch having at least one long side face which is as long as or longer than all other faces of the pouch in the direction of the strip (Figure 2, pouch 5), and

f. inserting the strip of sealed pouches into a carton (page 5 lines 23 – 27; Figures 4 – 10), wherein the bulk volume of said predetermined amount of foodstuff fed into each pouch is less than the predetermined volume of each sealed pouch, so that when each pouch is sealed, each pouch contains the desired quantity of foodstuff as well as a predetermined amount of air so that if a sealed pouch is placed on said long side face, a layer of air is formed above the foodstuff (page 4, lines 21 – 26), and wherein at least one pleat is formed on each side of the tube and at each end of each pouch so that each pouch adopts a substantially brick shaped configuration when sealed with the pre-determined amount of air and pre-determined amount of foodstuff therein (page 4, lines 10 -123; Figure 2, pleats 4). Claims 2 – 6, 8 – 20, 22, 27 and 30 – 32 depend from independent claim 1.

Independent claim 33 of the present claimed invention is directed to a method of packaging a brittle food-stuff in a strip of pouches folded into a space efficient pattern and inserted into a carton so that a layer of air in each pouch and between each pouch provides a cushioning effect that reduces the likelihood of breakage of the food-stuff (page 2, lines 28 -29). The strip of standard serving portion pouches also allows for a new fresh portion of the food-stuff to be enjoyed every time the food-stuff is consumed (page 2, lines 12 – 21). The method of independent claim 33 comprising the steps of:

- a. forming a tube having a predetermined cross sectional shape and area (page 4, lines 1 - 6; Figure 1)
- b. forming a first seal at a lower end of the tube (page 4, lines 6 – 10; Figure 2, seal 3)
- c. feeding a pre-determined amount of the food-stuff to be packaged into the tube (page 4, lines 14 – 16; Figure 2, food-stuff 204),

d. forming a second seal in the tube at a pre-determined distance above the first seal (page 4, lines 17 – 20; Figure 2, seal 3)

e. repeating the steps of feeding the foodstuff and sealing along the tube to form a strip of sealed pouches of pre-determined dimensions and predetermined volume containing the foodstuff each pouch having at least one long side face which is as long as or longer than all other faces of the pouch in the direction of the strip (Figure 2, pouch 5), and

f. inserting the strip of sealed pouches into a carton (page 5 lines 23 – 27; Figures 4 – 10), wherein the bulk volume of said predetermined amount of foodstuff fed into each pouch is less than the predetermined volume of each sealed pouch, so that when each pouch is sealed, each pouch contains the desired quantity of foodstuff as well as a predetermined amount of air so that if a sealed pouch is placed on said long side face, a layer of air is formed above the foodstuff (page 4, lines 21 – 26), and wherein the strip of filled pouches is folded into a space efficient pattern (page 4, lines 18 – 21; page 5, lines 19 – 21), and subsequently inserted into the carton in the space efficient pattern (page 5 lines 23 – 27; Figures 4 – 10).

VI. Grounds of rejection to be reviewed on appeal

The rejection of claims 1 – 6, 8 – 20, 22, 27, and 30 – 33 under 35 U.S.C. § 103(a) as being unpatentable over Kaufman (U.S. pat. 2,835,596) and Davy (U.S. pat. 3,199,756) or Soubier (U.S. pat. 2,194,451), and further in view of European Application 0302413 (EP'413).

VII. Argument

The present application is a Request for Continued Examination application (RCE) filed November 30, 2005. A previous RCE was filed January 10, 2005. Needless to say, there have been multiple rejections of the claims in this application. For the reasons stated herein, the applied references do not establish a *prima facie* case of obviousness.

In the present pending December 14, 2005 Action, the Examiner has admitted that the combinations of Kaufman and Davy and Kaufman, Davy and Warp are each overcome: “Applicant’s arguments with respect to claims 1-6, 8-20, 22, 27, 30-33 has [sic] been considered but are moot in view of the new ground(s) of rejection.” December 14, 2005 Action, p. 7, ¶3. Thus, the combination of Kaufman and Davy is already overcome as being insufficient to establish a *prima facie* case of obviousness. The arguments presented on pages 10-12 of the October 27, 2005 Amendment After Final Rejection were sufficient to overcome that prior art combination.

As a consequence, the pending rejection is entirely dependent upon the combination of Kaufman with the newly added references Soubier and EP’413.

As noted before, one skilled in the art would not combine the teachings of Kaufman and Davy to incorporate the feature of a strip of sealed pouches into Kaufman. One skilled in the art would also not combine the teachings of Soubier with Kaufmann to incorporate this feature. More importantly, Soubier teaches away from the present invention. Soubier is particularly concerned with the packaging of coffee. Coffee is not a brittle material within the understanding of the art. There is no perceived need to protect the coffee from physical damage during storage. Indeed, on page 2, column 1, lines 53 to 56, Soubier discloses using a vacuum to evacuate any gas from the package before sealing. This teaches away from the present invention in which an excess volume of air or gas is included above the brittle product to protect it. Further, there is no mention in Soubier of protecting the contents of the package from physical damage, only from exposure to the atmosphere (page 1, column 1, lines 5 – 6). One skilled in the art would not refer to the area of coffee packaging, particularly in view of the known technique of the evacuating coffee packages which would be completely opposed to the invention.

Of the references above, only Kaufman and Davy conceivably relate to the packing of brittle materials. Soubier relates to the packaging of a robust material, coffee, as described above, and would not have been considered by one skilled in the art for the packaging of brittle materials.

Also, neither Kaufman, Davy or Soubier teaches a brick shaped configuration. Kaufman teaches a method of packaging marshmallows with a volume of air. Kaufman does not teach a method of packaging whereby the package forms a brick shaped configuration upon sealing. As can be seen in Figure 2 of Kaufman, the package produced does not hold one consistent shape at all times, but instead only has a flat wall when placed against a flat surface. By contrast, in the present invention a brick shaped configuration is formed upon the sealing of the package, due to the inclusion of a pre-determined volume of air with the food-stuff and because of the formation of diametrically opposed pleats during the sealing process (page 4, lines 10 – 23; Figure 2, pleats 4). Because of this, the packages of the present invention retain a brick shaped configuration at all times.

Further, Kaufman is drawn to a method of packaging marshmallows "without substantial sticking or deforming of the marshmallows." Kaufman, column 2, lines 28 – 29. As marshmallows are soft substances, they will not stick together or deform until a great amount of force is applied to them, especially for an extended period of time. When a force is applied to the package of Kaufman, the force causes the package to change shape while also applying to the contents of the package and causing them to move, as can be seen by comparing Figures 2 and 3 of Kaufman. As such, the method of Kaufman allows for the force to be applied to the contents of the package and then dissipated by the reformation of the shape of the package. After the package takes its new configuration, the marshmallows may then return to their normal shape in their new location within the package. The method of Kaufman works well for marshmallows,

as the brunt of the force is borne by the package while lesser forces initially impact the package contents. However, the method of Kaufman would not work with brittle food-stuffs, wherein even weak forces applied over a short term would cause damage to the contents.

By contrast, the packages of the present invention are already formed into a brick shaped configuration, and no change in their configuration takes place upon the application of a force to the package. Because the configuration of the package is stable, the package absorbs the entire force, preventing any of the force from being applied to its contents. As such, brittle food-stuffs are protected and are not subjected to force. The only time the contents of the packages of the present invention move are when they are subjected to the pull of gravity, such as when a package is turned onto its side.

EP '413 teaches an unrelated brick shaped container. EP '413 in fact relates to the production of drink packages (see column 1, lines 14-16 and column 3, lines 39-40). This application relates to a completely different area of art. Brittleness is not a concern with drink packaging. One skilled in the art regarding the present invention would not have referred to this reference. In addition, it is not the intention of EP '413 to provide a strip of connected containers. They are separated shortly after being formed (see Fig. 1). It is well known that when the drink containers are filled with liquid, they become very rigid, due to the incompressible nature of their filling and the strength of the cardstock or paper from which they are normally formed. In the present invention, no such strength can be obtained, because the packages are formed of a relatively flexible material and comprise a substantial volume of air which does not give rigidity to the packaging in the same way. The present inventor has realized that connecting a series of brick shaped containers gives added lateral stability and furthermore the outer carton provides strength to the entire structure. The packaging system comprises an outer carton and inner pouches which work together to cushion and protect the brittle contents

from damage due to handling from the original time of packaging right through the point of purchase by the consumer. The combination of brick shaped pouches securely held in formation by the outer cardboard carton creates a unique protection system for the brittle contents. The inner pouches snugly fitted into the outer carton give it additional support, further resisting deflection of the outer carton to outside pressure/force, which could damage the contents. There is no disclosure of this in either of Soubier or Davy and certainly not in the EP '413 application. If one skilled in the art did apply the teaching of the EP '413 application, the result would have been separate brick shaped containers made of a rigid material such as cardstock. This is a further teaching away from the present invention.

For the reasons set forth above, the Appellant respectfully submits that the applied references cannot be combined to obtain the present invention. Therefore, the Appellant respectfully urges reversal of the outstanding grounds of rejection.

Respectfully submitted,

Andrew LAITT

By: Michael D. White
Michael D. White
Reg. No. 32,795
Attorney for Appellants

BLANK ROME LLP
Watergate
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
Telephone: (202) 772-5800
Facsimile: (202) 572-8398
Customer No.: 27557

VIII. Claims appendix

1. A method of packaging a brittle food-stuff comprising the steps of forming a tube having a predetermined cross sectional shape and area, forming a first seal at a lower end of the tube, feeding a pre-determined amount of the food-stuff to be packaged into the tube, forming a second seal in the tube at a pre-determined distance above the first seal, repeating the steps of feeding the foodstuff and sealing along the tube to form a strip of sealed pouches of pre-determined dimensions and predetermined volume containing the foodstuff each pouch having at least one long side face which is as long as or longer than all other faces of the pouch in the direction of the strip, and inserting the strip of sealed pouches into a carton, wherein the bulk volume of said predetermined amount of foodstuff fed into each pouch is less than the predetermined volume of each sealed pouch, so that when each pouch is sealed, each pouch contains the desired quantity of foodstuff as well as a predetermined amount of air so that if a sealed pouch is placed on said long side face, a layer of air is formed above the foodstuff, wherein at least one pleat is formed on each side of the tube and at each end of each pouch so that each pouch adopts a substantially brick shaped configuration when sealed with the pre-determined amount of air and pre-determined amount of foodstuff therein.

2. A method as claimed in claim 1, wherein the strip of sealed pouches is arranged substantially upright or transverse in the carton.

3. A method as claimed in claim 1, wherein the strip of sealed pouches is arranged in a concertina configuration in the carton.

4. A method as claimed in claim 2, wherein at least two strips of sealed pouches are arranged in the carton.
5. A method as claimed in claim 4, wherein the at least two strips of sealed pouches are arranged parallel to one another in the carton.
6. A method as claimed in claim 4, wherein the at least two strips of sealed pouches are releasably attached to one another.
8. A method as claimed in claim 1, wherein the at least one pleat is formed in each pouch after the lower end of each pouch is sealed but before the goods are fed into the pouch.
9. A method as claimed in claim 1, wherein the pouches in the or each strip are substantially the same size.
10. A method as claimed in claim 1, wherein each pouch is substantially cuboidal in shape.
11. A method as claimed in claim 1, wherein each pouch is substantially cubic in shape.
12. A method as claimed in claim 1, wherein the sealing is by means of heat.
13. A method as claimed in claim 1, wherein the sealing is by means of an adhesive.

14. A method as claimed in claim 1, wherein the tube is formed of plastics material.
15. A method as claimed in claim 1, wherein the tube is formed of waxed paper.
16. A method as claimed in claim 1, wherein printed matter is applied to each pouch of the strip of pouches.
17. A method as claimed in claim 1, wherein perforations are formed between each pouch of the strip of pouches to enable separation of the pouches from one another.
18. A method as claimed in claim 17, wherein the perforations are formed by means of a comb-type cutter.
19. A method as claimed in claim 18, wherein the comb-type cutter has means for severing the pouches from one another.
20. A method as claimed in claim 19, wherein the pouches are severed from one another after a pre-determined number of pouches has been filled and sealed.
22. Packaged brittle food-stuff produced by the method as claimed in claim 1.
27. A method as claimed in claim 1, wherein the strip of filled pouches is folded at points between the pouches.

30. A method according to claim 1, wherein the food-stuff comprises breakfast cereal.

31. A method according to claim 1, further comprising the steps of determining the predetermined volume of food-stuff, determining the predetermined volume of the sealed pouches, so that the predetermined volume of the sealed pouches is greater than the predetermined volume of food-stuff and so that, when the pouch is placed on its side, a layer of air is formed above the food-stuff, determining the predetermined shape and the predetermined distance between the first and second seal from said predetermined volume.

32. A method as claimed in claim 30, wherein said carton has an opening face and a bottom face opposite said opening face, and an axis extending from said bottom face to said opening face, the strip of sealed pouches being arranged substantially transverse to said axis in the carton and arranged in a concertina configuration.

33. A method of packaging a brittle food-stuff comprising the steps of forming a tube having a predetermined cross sectional shape and area, forming a first seal at a lower end of the tube, feeding a pre-determined amount of the food-stuff to be packaged into the tube, forming a second seal in the tube at a pre-determined distance above the first seal, repeating the steps of feeding the foodstuff and sealing along the tube to form a strip of sealed pouches of predetermined dimensions and predetermined volume containing the foodstuff each pouch having at least one long side face which is as long as or longer than all other faces of the pouch in the direction of the strip, and inserting the strip of sealed pouches into a carton, wherein the bulk volume of said predetermined amount of foodstuff fed into each pouch is less than the predetermined volume of each sealed pouch, so that when each pouch is sealed, each pouch

contains the desired quantity of foodstuff as well as a predetermined amount of air so that if a sealed pouch is placed on said long side face, a layer of air is formed above the foodstuff, wherein the strip of filled pouches is folded into a space efficient pattern the strip of filled and sealed pouches being then inserted into the carton.

IX. Evidence appendix

There is no evidence of record under 37 C.F.R. § 1.130, 1.131 or 1.132.

X. Related proceedings appendix

There are no related proceedings; thus, there is nothing to submit in this appendix.